

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a Connecticut
corporation,

CIVIL ACTION NO.: 1:03cv762Ro

Plaintiff,

v.

J. L. HOLLOWAY; EMILE DUMESNIL;
CHARLES DECUIR; JOHN ALFORD;
RICHARD T. MCCREARY; RICK REES;
JOHN DANE, III; ALAN A. BAKER; T.
JAY COLLINS; JEROME L. GOLDMAN;
GARY KOTT; RAYMOND E. MABUS;
ANGUS R. COOPER, II; BARRY J. GALT;
KENNETH W. LEWIS; and ERNST &
YOUNG, L.L.P.

Defendants.

**MOTION TO EXCLUDE EXPERT TESTIMONY OF
ROBERT ALVIS DAVIDSON**

Plaintiff Travelers Casualty and Surety Company of America (“Travelers”), through its undersigned counsel, respectfully moves for the entry of an order excluding the expert testimony of Robert Davidson.

1. Defendant Ernst & Young (“E&Y”) intends to offer Robert Davidson as a purported expert in the field of surety underwriting.

2. Mr. Davidson intends to testify, consistent with his expert report (the “Report,” attached hereto as Exhibit “A”), that Travelers did not rely on a year-end 1999 financial statement (the “1999 10-K”) audited by E&Y when it issued a \$70 Million surety bond (the “Bond”) to Freide Goldman Halter (“FGH”) in September of 2000.

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3. Mr. Davidson's proposed testimony is unreliable because, among other things, Mr. Davidson has no experience as an underwriter and has never worked as an underwriter for a surety.

4. Additionally, Mr. Davidson's opinion that Travelers did not rely on the 1999 10-K is directly contrary to the record evidence in this case – specifically, the sworn testimony of Travelers' underwriters, both of whom testified that in making the decision to recommend issuance of the Bond, they relied on the 1999 10-K.

5. Because Mr. Davidson's opinion and conclusion that Travelers did not rely on the 1999 10-K necessarily opines on the credibility of the testimony of Travelers' underwriters, it impermissibly invades the role of the jury. For this reason alone, it is improper and must be stricken.

6. Moreover, Mr. Davidson does not purport to have any expertise in the area of "human nature" and "credibility," and his personal determination that Travelers' underwriters did not rely on the 1999 10-K (when they said they did) will not be helpful to the jury.

7. Lastly, Mr. Davidson's opinion should be stricken because it forecloses the inquiry into Travelers' decision to issue the Bond without adequately taking into account obvious alternative explanations for such conduct.

8. Attached hereto are Travelers' exhibits referenced in its supporting memorandum. These include the following:

Exhibit "A" - Davidson Expert Report

Exhibit "B" - Excerpts from Davidson Deposition

Exhibit "C" - Public Record

Exhibit "D" - Excerpts from Schwait Deposition

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Exhibit "E" - Westlaw cases

WHEREFORE Travelers respectfully requests that an order be entered striking that part of Mr. Davidson's Report stating that Travelers did not rely on the 1999 10-K, or that it played no role in Travelers' decision to recommend issuance of the Bond, and precluding Mr. Davidson from offering any related testimony.

CERTIFICATE OF SERVICE

I, Frank R. Rodriguez, attorney for Plaintiff, Travelers Casualty & Surety Co. of America, do hereby certify that I have this date caused a true and correct copy of the foregoing to be served upon counsel for Defendant as follows:

VIA U.S. MAIL:

Joseph B. Haynes, Esq.
Michael M. Raeber, Esq.
King & Spalding, LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309-3521

Cheri A. Grosvenor, Esq.
King & Spalding, LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309-3521

Lisa Wolfgast, Esq.
King & Spalding, LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309-3521

VIA E-MAIL:

Joseph B. Haynes, Esq. - jhaynes@kslaw.com
Michael M. Raeber, Esq. - mraber@kslaw.com
Cheri A. Grosvenor, Esq. - cgrosvenor@kslaw.com
Lisa Wolfgast, Esq. - lwolfgast@kslaw.com

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This 30th day of May, 2006.

/s/ Frank R. Rodriguez

Travelers Casualty and Surety Company
Of America, Plaintiff

RODRIGUEZ TRAMONT
GUERRA & NUÑEZ, P.A.

By: /s/ Frank R. Rodriguez

COUNSEL OF RECORD

William V. Westbrook, III (MS Bar 7119)
John Paul Barber (MS Bar 1983)
Bryant, Clark, Dukes, Blakeslee,
Ramsay & Hammond, PLLC
2223 14th Street
P.O. Box 10
Gulfport, Mississippi 39502
Telephone: (228) 863-6101
Facsimile: (228) 868-9077

OF COUNSEL:

Andrew V. Tramont, Esq. (FL Bar 322830)
Frank R. Rodriguez, Esq. (FL Bar 348988)
RODRIGUEZ TRAMONT
GUERRA & NUÑEZ, P.A.
2100 Ponce De Leon Boulevard, PH II
Coral Gables, Florida 33134
Telephone: (305) 350-2300
Facsimile: (305) 350-2525
Attorneys for Plaintiff,
Travelers Casualty And
Surety Company of America